

REMARKS

The Claims currently under consideration are 1, 3, 4, 6, 7, and 11-33. Claims 1, 4, 7, 14, and 15 have been amended per the Examiner's suggestions. Claim 13 has been amended to remove the internal inconsistencies complained of by the Examiner. Claims 7, 16 and 21 have been amended to specify that the flat or nonrugose cuff area is that of the resultant garment, to positively recite what was considered to be inherent in the claims before the Examiner's remarks at paragraph 9 of the Detailed Action. Independent Claims 1, 13, 14 and 15 have been amended to recite that the necking required is from above an insubstantial amount to about 80%. Support for these amendments can be found at page 17, line 12, and page 22, line 21-page 23, line 2; as well as from the entire teaching of the specification when considered as a whole from the viewpoint of the person of skill in the art. Claims 26-29 have been added to depend from Claim 1 and further specify the necking range. Claims 30-33 have been added to depend from Claim 13 and further specify the necking range. Support for these claims can also be found at page 22, line 21-page 23, line 2. No new matter is presented hereby. The Detailed Action of 31 October 2005 will now be addressed with reference to the headings and any paragraph numbers therein.

Claim Objections

Per paragraph 3 of the Detailed Action, Claims 1, 3, 4, 6, 7, and 11-25 are objected to for various informalities. Claims 1, 4, 7, 14, and 15 have been amended per the Examiner's suggestions. The Examiner is thanked for her helpful suggestions in clarifying the claims.

Claim Rejections – 35 USC § 112

Per paragraph 4 of the Detailed Action, Claims 3, 4, 6, 13, and 16-25 are rejected under §112, second paragraph. The Examiner has asked a series of questions with respect to Claims 3-4, 6, 16 and 21 rather than specifying unclear verbiage. Applicants, in order to advance prosecution, proffer the following answers. The web layers of Claims 3, 4 and 6 may be considered as a precursor garment web or may be one part of a precursor garment web dependant upon the phase of manufacturing which the garment is undergoing. It is considered to be clear to one of ordinary skill in the art that the process described within the specification would most desirably take place on a so-called “converting” or “conversion” line where component webs and assemblies of the finished diaper/garment are put together and converted to a finished garment.

In light of the Examiner’s interpretation of the Claims as set forth in the Detailed Action’s paragraph 6 under the heading ***Claim Language Interpretation***, it is believed the Examiner has grasped the meaning of the present Claims. Therefore, this appears to be *prima facie* evidence that the Claims meet the legal standard of sufficient clarity.

The Examiner has pointed to an internal inconsistency in Claim 13. This inconsistency has been corrected by amendment.

Further considering the amendments made herein to obviate the Examiner’s objections, it is believed that any person having ordinary skill in the art and process of automated garment manufacture would have no trouble understanding the meaning and import of the claim limitation verbiage. It is therefore respectfully requested that the present rejections be considered and withdrawn.

Double Patenting

The comments of the Examiner are acknowledged. It should be noted however that Claim 7 has a limitation directed to a specific time element which is not included within the language of Claim 16.

Claim Language Interpretation

As stated above, the Examiner's interpretation of the terminology is in keeping with the intended meanings. Therefore, Applicants are unable to understand the necessity for, or the reasoning of, the § 112 rejections of Claims 3-4, 6 and 16-25 when it is apparent the Claims have been understood by the Examiner, and also have been further clarified through the record of this prosecution. The Examiner further appears to be saying that because the specification does not explicitly define the percentage of necking, the Claims can be interpreted to require so little percentage of necking as to be without practical effect, and thus, any tensioning taught by Litchholt can be considered a teaching of "necking" from the prior art. No reasonable interpretation by a person of ordinary skill in the art would occur in this manner. Nevertheless, in order to advance prosecution, Applicants have amended the claims hereby in order to specify that the necking of the precursor garment applies a more-than-incidental effect to achieve the described functionality of the cuff areas resulting from the present methods. Reconsideration of the present invention in light of a reasonable interpretation of its limitations and teachings, and those of the cited art, is requested.

Claim Rejections – 35 USC § 102

Per paragraph 8 of the Detailed Action, Claims 1, 3, 4, 6-7, and 11-25 stand rejected under 102(b) as anticipated by US Patent 5,503,919 to Litchholt et al.

(hereinafter "Litchholt"). It is noted that the Examiner has informed Applicants that the reference to "Litchholt '027" in the second line of paragraph 8 is a typographical error and the correct reference is as stated above.

Applicants respectfully traverse because the rejection is based on a factual error. It is the Examiner's first position that Litchholt explicitly teaches necking to a first dimension by tensioning as supported by contention that Litchholt teaches a tension applied to a web to distort the web (Detailed Action, page 5, lines 2-9). Applicant respectfully disagrees with the Detailed Action's interpretation that because Litchholt may either distort or tension its webs, Litchholt necessarily meets the claims of the present invention.

Further, in a telephone interview between the undersigned Applicants' attorney and the Examiner on 04 January 2006, (in which no agreement was reached) the Examiner stated that the numerous patents incorporated by reference in Litchholt precluded an assumption that a stated range of necking as in the presently amended claims will define over Litchholt. Applicants' attorney has reviewed Litchholt to determine those incorporated references likely to bear on the subject matter of the present invention. Applicants' attorney has reviewed each of the incorporated references in column 19 of Litchholt¹. All are directed to variants of a so-called "zero-strain laminate"². A "zero-strain laminate" is defined by these references as a laminate where two layers are connected together without tension, the first layer being elastically retractable while the second (nonelastic) layer is stretchable to a point of permanent distortion without retraction. After the layers are connected, the laminate

¹ It is noted that reference 4,290,563 at col. 19, line 26 is actually 4,209,563

² It is noted that some references such as Sisson's 4,107,364 and 4,209,563 incorporate the "zero strain" idea into a single web of mixed fibers.

is drawn to the second layer's point of permanent distortion, and released, whereupon the laminate puffs in the Z direction due to the retraction of the elastic layer and a stretch is obtained in direction of distortion. (This is unlike a necking stretch where the web is primarily expandable in the direction perpendicular to the direction of stretch.)

Applicants' attorney has also reviewed the reference cited at col. 21 of Litchholt, i.e., U.S. 4,081,301,³ which does not disclose the method of the present invention. The Examiner also cited col. 26, line 36 of Litchholt as being of interest. This passage of Litchholt also cites a mechanical stretching to achieve a permanent elongation, which is not a necking within the meaning of the present invention. Applicants note that the present specification discusses the differences between necking and a permanent distortion of a web at page 10, line 6. It is urged by Applicants that the relevant "zero strain" references incorporated within Litchholt supply no teaching which anticipates or suggests the present invention under a reasonable interpretation of the invention as a whole and which lacks the benefit of hindsight.

Litchholt supplies no teaching of providing a necking tension as required by the claims. The distortion of the Litchholt web is taught as being done mechanically by the meshing of corrugated rolls (col. 19, line 30) resulting in the distinctive gathered or shirred pattern seen in its Fig. 4. The line tensioning taught by Litchholt, at col. 18, line 6, is a tensioning to prevent pucker in the web and is not taught as stretching the web itself to any degree. Nevertheless, to explicitly define

³ It is noted that U.S. 3,860,033 is also cited at col. 21, line 13. This number appears to be incorrect. The bibliographic information listed therewith also did not return a result from the PTO database.

over any incidental tension which may occur due to this line tensioning in Litchholt, applicants have further defined the required amount of necking within the present claims. Another line tensioning taught as applied to the web by Litchholt, at col. 20, line 26, is a tensioning to prestretch the central adhesive (30b, Fig. 2) layer of its lamina. This tensioning of an adhesive layer is not analogous to, and does not meet the limitations of, the present claims. No reasonable interpretation of “necking tension” would grant that Litchholt’s mechanical distortion, tensioning to remove puckers in a web, or its adhesive prestretch tensioning, are equivalent to the web necking teachings and limitations of the present invention. Withdrawal of the rejection as based upon an incorrect interpretation of the prior art is therefore requested.

When the present invention is properly interpreted as a whole, and not viewed as a mere series of limitations, the novelty, nonobviousness, and advantages to the art presented by the present invention are evident. The Examiner appears to have clearly used hindsight to combine several unrelated teachings of Litchholt and deem them equivalent to the present invention. Therefore, a *prima facie* case for the rejections has not been made.

Specifically with respect to Claims 7, 16 and 21 concerning flat or nonrugose cuff areas, Litchholt shows only gathered, rugose, or shirred cuff (waist) areas in the garments of its Figs. 3 and 4 resulting from the distortion processes which the Examiner attempts to analogize to the present invention. However, Litchholt’s gathered cuff areas do not meet the limitations of present claims. Therefore, a *prima facie* case for the rejections has not been made.

Further specifically with respect to Claims 19-20 and 24-25 concerning expandability percentages of cuff areas, the rejections are based on an incorrect interpretation of the prior art in citing a passage of Litchholt (col. 32, line 40), which refers only to a retraction percentage of its elastomeric foam and gives no teaching with respect to the expandability of its lamina in a cuff area, especially as may result from the claimed methods of the present invention. Therefore, a *prima facie* case for the rejections has not been made.

For all the foregoing reasons the Claims as presently amended are believed to be allowable over the prior art. A notice to that affect is earnestly solicited.

Information Disclosure Statements

The Examiner has still not acknowledged those references cited within Applicants' Sixth Information Disclosure Statement (received by the Office as evidenced by the original documents being copied into the IFW on PAIR). Acknowledgement and consideration of the Sixth Information Disclosure Statement at the Office's earliest convenience is requested.

Request For Telephonic Interview

Clearly, there are differences between the present invention and the cited reference(s) involving patentable subject matter. These differences are believed by the Applicants to be properly defined in the present Claims. The Examiner is requested to call Applicants' attorney (per the provisions of M.P.E.P. §713) to discuss any further problems or suggest solutions in defining the present invention in order to

expedite the case towards allowance before issuing a further Office Action.

In conjunction herewith, Applicants submit a Request for Continued Examination. The fee for the Request for Continued Examination including that for each additional claim is enclosed herewith.

Favorable consideration is requested.

Respectfully submitted,

A handwritten signature in cursive script, appearing to read "Roland W. Norris".

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